

## **REMARKS**

Claims 1-20 are pending in this Application. Claims 2, 5, 13, and 16 are amended to correct minor typographical errors.

### **Double-Patenting Rejections**

The Examiner rejects claims 1-8 and 10-19 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-22 of commonly owned Patent No. 6,511,246 in view of Dattel (6,220,775). The Examiner also rejects claims 9 and 20 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-22 of commonly owned Patent No. 6,511,246 in view of Dattel and in further view of Fournier (4,970,905). In response, the Applicants file a terminal disclaimer with this response in compliance with 37 C.F.R. §1.321. The Applicants submit that this disclaimer overcomes the double-patenting rejections by the Examiner.

### **103 Rejections**

The Examiner rejects claims 12, 18, and 19 under 35 U.S.C. 103(a) as being unpatentable over Leitman in view of the general knowledge of the art. The Applicants respectfully disagree.

Claim 12 recites, among other things, a first cover, a tab coupled with the first cover, and a second cover coupled with the first cover and configured to permit viewing of the tab when the first and second covers are in a closed position. With reference to page 4, paragraphs 1 and 2 of the Office action, the Examiner states that it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the first and second covers [of Leitman] of any material (i.e., transparent) enabling viewing of the contents therein, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability of the intended use as a matter of design choice.

It is respectfully submitted that the Examiner's suggested modification of Leitman is based solely on impermissible hindsight reconstruction. There is simply no suggestion or motivation in Leitman, or in the general knowledge of the art, to make the covers out of transparent material so that the tab would be viewable when the first and second covers are

closed. Only the Applicant's specification itself provides any suggestion to configure the cover to permit viewing a tab when the covers are closed.

Even if there is some motivation outside of the Applicant's own specification, which the Examiner has not provided, it is clear that Leitman contemplates a standard vinyl-covered binder where the covers are made of opaque chipboard covered with vinyl bound together at the edges (such as by heat welding). The pocket flaps (32, 34) are also made of vinyl and are heat welded to the covers. The Examiner states that it would have been merely a matter of design choice to provide the covers of any material. However, in order for the tab to be viewable through the cover, the cover of Leitman would have to be completely redesigned to be made of a completely different material and to be manufactured in a completely different way. Such a major re-design is not merely a "design choice", as suggested by the Examiner. Therefore, the Applicants respectfully submit that there is no suggestion or motivation to modify Leitman as suggested by the Examiner, and that the rejection is therefore improper. For these reasons, it is submitted that claim 12 is allowable.

Claims 13-20 depend from claim 12 and are allowable for the reasons discussed above for claim 12, as well as for other reasons that may or may not be discussed herein.

The Examiner also rejects claims 13-17 under 35 U.S.C. 103(a) as being unpatentable over Leitman in view of Dattel. Claim 13 depends from claim 12 and is therefore allowable for the reasons discussed above with respect to claim 12. Additionally, claim 13 recites, among other things, that the second cover includes a cutout configured to permit viewing of the tab when the first and second cover are in a closed position. With reference to page 5, paragraph 1 of the Office action, the Examiner states that Dattel discloses a folder including a substantially elliptical cutout (19) completely within a perimeter of the face including a recessed edge (see Fig. 1). The Applicants respectfully disagree.

The cutouts (19) of Dattel are not configured to permit viewing of a tab when the first and second covers are in a closed position, as claimed in claim 13. Rather, as described at Col. 3, lines 60-62, the cutouts (19) of Dattel are positioned to receive the rings of the binder when the covers are closed and would certainly not permit any viewing of the tabs, which would be located much closer to the distal edges (8, 9) of the covers. Therefore, the combination of Leitman and Dattel does not teach or suggest each and every element of claim 13, and thus, claim 13 contains additional patentable subject matter.

Claims 14 and 15 depend from claim 13 and are therefore allowable for the reasons discussed above with respect to claims 12 and 13, as well as for other reasons not discussed herein.

Claim 16 depends from claim 12 and is therefore allowable for the reasons discussed above with respect to claim 12. Additionally, claim 16 recites, among other things, that the second cover includes a recessed edge configured to permit viewing of the tab when the first and second cover are in a closed position. With reference to page 5, paragraph 2 of the Office action, the Examiner states that Dottel discloses a folder comprising lateral faces and wherein one of the faces includes a recessed edge having a projection. However, with reference to Figs. 1 and 2 of Dottel, the recess in the front face of the Dottel folder does not permit viewing of any tab when the first and second faces are in the closed position. Rather, the cut out (16) receives hook portion (13) to close the binder. There is no teaching or suggestion in Dottel of a tab viewable through the cut out when the binder is closed. Therefore, the combination of Leitman and Dottel does not teach or suggest each and every element of claim 16. For these reasons, claim 16 contains additional patentable subject matter.

Claim 17 depends from claim 16 and is therefore allowable for the reasons discussed above with respect to claims 12 and 16, as well as for other reasons not discussed herein.

The Examiner also rejects claim 20 as being unpatentable under 35 U.S.C. 103(a) over Leitman in view of Fournier. Claim 20 depends from claim 12 and is therefore allowable for the reasons discussed above with respect to claim 12, as well as for other reasons that may or may not be discussed herein. Fournier does not correct the deficiencies of Leitman as discussed above with respect to claim 12, and thus the combination does not teach or suggest each and every element of claim 20. For these reasons, claim 20 is allowable.

In view of the foregoing, entry of the Amendment and allowance of claims 1-20 are respectfully requested.

The undersigned attorney is available for telephone conference at any time.

Respectfully submitted,

A handwritten signature in cursive script, reading "Richard L. Kaiser".

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